IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3467 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISAAK IBRAHIM SANDHI NOVDA

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI for Petitioner

MR SK PATEL APP for Opponent.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 21/07/2000

ORAL JUDGEMENT

By this application under Sec. 439 of the Criminal Procedure Code, the applicant alleged to have committed the offences punishable under Sec.489 B & C and Sec. 120 B of the Indian Penal Code, prays for being

released on bail, after being arrested in that connection.

2. Necessary facts may in brief be stated. Shri P.O. Bhatt, the P.S.I. of Visavadar Police Station was informed by District Superintendent of Police, Junagadh that Ramesh alias Ramji alias Rama Laxmidas Suthar was at his place possessing, procuring and trafficking in fake or counterfeit currency notes each of Rs.500/= denomination on a large scale. As directed, the Police Sub-Inspector arranged for raid calling two panchas. At the time of raid Ramesh alias Ramji was present. On the house being ransacked, few fake currency notes of Rs.500/= were found. The same were seized. During the investigation, the Police found that there was well planned net-work for foisting fake currency notes on the public, which was menacing the safety of the currency. The Police on divulgation could know that Vijay Shah, Bhikhabhai Tulsi, Kishore Jivanbhai, Bachubhai Mistry, applicant, Kamlesh Vadgama, Ishabhai, Dhanesh Bachubhai, Mohmad Ibrahim, Sanjay Shah and others had conspired to fabricate or bring into India fake currency notes of different denominations and put the same into circulation so as to have unjust enrichment and cheat the people at large. By the time, fake currency notes of about Rs.6 lacs were sent to Bombay and different places. After Ramesh alias Ramji was arrested shocking facts about fake currency notes came to surface. The applicant was also found involved into the scam. The applicant has after being arrested, filed this application for bail under Sec.439 Criminal Procedure Code.

3. It is the submission of the learned advocate for the applicant that the police having been put to a wrong track, the applicant is wrongly involved. He has committed no offence, and if the applicant is released on bail, he would abide by all the conditions harsh or whatever in nature imposed, and would not act in the manner injurious to the interest of the prosecution. By denying the bail, the applicant cannot be punished before trial. The principle that bail is the rule, and personal liberty guaranteed in the Constitution may not be overlooked. Both are required to be esteemed and may not be ignored or discarded and made practically valueless by refusing bail.

4. In reply, the learned A.P.P. contends that the applicant is very much involved in the wrong alleged and police is not put to a mis-track. Because of the obsession now a days prevailing, everyone tries to be rich by unlawful means and dishonestly or nefariously,

cornering or grabbing maximum possible wealth, running counter to the larger good and national interest. Such offences of counterfeiting the currency notes and putting into circulation amounting to cheating and rapine impair the national economy. If the accused of such offences leading to ruination and downfall in different fields are released on bail, they being the poachers and part of organised crime go-on committing the same wrong directly, or indirectly remaining behind curtain and gloat. The contentions advanced on behalf of the applicant, is nothing but the subterfuge or the ruse to get the bail any how. The principles on which the learned advocate for the applicant seeks bail, are not to be applied off the cuff, or mechanically or blindly as a matter of course. Now-a-days, such rackets at the international level are increasing by leaps and bounds and timely check is necessary. Such wrongs and repetition thereof can be nipped in the bud by refusing the bail. Recollecting the saying "Prevention is better than cure", the learned A.P.P. while concluding has, keeping future disasterous possibilities in mind, urged to reject this application.

5. The first and foremost consideration qua determination of the bail application relating to non-bailable offences is to see whether the accused seeking bail, is in any way connected with the offence alleged against him. If the materials on record prima facie show his involvement, the Court has then to examine whether other considerations favour the accused. It may, at this stage, be stated that certain offences inclusive of conspiracy are of such a nature that direct, lucid and palpable evidence is a rarity. The Court has to, in that case, draw the conclusion considering the facts and circumstances on record and also on the basis of the conduct of the accused.

6. From the police papers, the learned A.P.P. draws my attention to the statement of Kishorsinh Jayavant Jadeja, who is running his S.T.D. Booth. What appears from his statement is that the applicant was often going to his Booth for having telephonic talk with the other scamsters involved in the conspiracy. Whatever he was talking on phone was being over heard by this witness. According to this witness, during the talk, the petitiner was inquiring how-many fake currency notes and of what denomination were required and how he should supply the same and when, for putting the same into circulation through different persons/agencies. His such statement, at present is sufficient to prima facie hold that he is involved in the offence alleged. Now, the next question that arises for examination is about other

considerations, which guide the Court in the exercise of the discretionary powers. The guiding considerations are;

[1] Whether releasing the accused on bail is in any way forbidden by any statutory provision ?

[2] Whether he would intimidate the witnesses or win-over them for getting support to his defence and/or for abstaining from supporting the prosecution ?

[3] Whether he would be available easily at the time of his trial and would submit to the custody if convicted and sentenced at last or would flee and would not be available ?

[4] Whether he would tamper with the evidence ?

[5] Whether he would commit like-wise or any other offence or wrong directly or indirectly remaining behind curtain ?

[6] Whether he would be retributive or revengeful or retaliative, i.e. whether his release will endanger safety of the persons viz., complainant and witness or other concerned or property ?

[7] Whether his own safety is likely to be endangered ?

[8] Whether larger good, national interest, social order, national security, public safety and/or health are likely to be jeopardised ?

[9] The nature and gravity of offence being shocking and alarming or barbaric and day in and day out its effect spreads panic amongst the people or section of the people or damages civilization in the society turning back to jungle law ?

[10] Other peculiar circumstances of each case appearing on record, dictating the exercise of discretion in particular way.

To state in short in different words, is to examine whether accused after being enlarged on bail, is likely to act or behave in a manner injurious to the interest of the prosecution or larger good, or national interest misusing the liberty granted. If the answer to any of the above first nine points is in the affirmative, or the consideration of 10th point signals premonition or forewarning of any evil or wrong or misfortune and puts the Court at its guard the bail must ordinarily be refused.

7. The learned advocate for the applicant has claimed bail on the principle of "bail and not jail", based on liberty guaranteed under the Constitution. Often in bail matters, the principle is sought to be loosely applied so as to get the bail any how. It is, hence, necessary to dissipate mistaken impression. No doubt, "Bail and not jail" is the well-cherished principle based on a right to personal liberty not only safeguarded, but put at the highest pedestal also vide Article 21 of the Constitution of India; and so ordinarily personal liberty is the governing factor in case of bail, but the same cannot be stretched too far or beyond its normal frontiers. It does not and cannot have dominion over larger interest, social order, public safety, public health and of course national interest or security as well or possibility of liberty being abused. The claim of the accused seeking bail therefore cannot be countenanced if it is likely to run counter to the larger interest, social order, public safety, public health or the national interest. To put it in different words, bail cannot be granted under the guise of liberty if there is likelihood of accused's subjugating larger interest, public safety, social order, or wellbeing and national interest, or security or there is possibility of accused's misusing or abusing his liberty after bail. In case of such likelihood, any subtle attempt to get bail under the guise of liberty must be frowned upon and frustrated.

8. The prosecution has also doubted the bonafides of the applicant. The say of the prosecution cannot lightly be taken and swept under the carpet. It is emphatically submitted that the applicant with the help of international agency will misuse the liberty which would be injurious to the national interest. He being the scamster, and poacher will again put the fake currency notes into circulation for his as well as his allies' unjust enrichment indulgence and affluence which would harm the larger good and national economy. The weighty contentions of learned A.P.P. cannot lightly be swept

under the carpet. Robbery, Dacoity, Brigandage, Murder, Sexual violence on women, Kidnapping, Gang-rape, selling girls for immoral traffic, foisting upon people or trafficking or possessing or intruding or fabricating fake currency notes, Narcotic Drugs, hijacking, waging war, adulteration, terrorist or subversive activities, surreptitious stealing of valuable securities for extensive peculation, forgery for cheating or defrauding or befooling the public at large for grabbing money or property, exploitation unlawful enrichment and the like or conspiracy and rackets thereof damaging larger good or public safety or national interest and security resulting into clutter & chaos and leading to pogrom & untold plight and consternation as well desperation of the people in general and victims in particular, are going berserk even at international level, and repetition thereof is required to be curbed in real earnest keeping a tight rein on the same.

9. One thing cannot be lost the sight of. The person who has planned for his unlawful enrichment becoming a part of the scam would certainly bide or hover and indulge in that activity either directly or indirectly remaining behind curtain and would not like to give up either because of his helplessness having no other option left or compulsion, or obsessed with wealth prefers to go-on with the ploy or scram - found to be the hen laying golden eggs without any labour or exertion; but easily and quickly. Even if the strictest conditions are imposed, minute to minute watch on the activities of the accused is not possible, and there is no guarantee that the accused would not again indulge in such activities. Any strict conditions in such cases fall short and cannot have any deterrent effect. The applicant, who has joining hands with others put the fake currency notes in circulation involved himself in trafficking or possessing fake currency notes, cannot, on the ground of liberty, be released on bail because there is likelihood of his subjugating larger interest, social order and national economy repeating the same wrong. Mr. S.K. Patel, learned A.P.P. is also right in submitting that this incident is a part of a conspiracy hatched by the Inter Service Intelligence, the secret service of Pakistan and intention is to destabilise Indian economy. If such applicant is released on bail, the agency at international level, planning to have economic war with India and make India a poor and weak country, will get further chance to fabricate more and more fake notes or get the same from other countries, put into circulation, and foist on people by different devices, the result of which is to make our economy rickety, and the police

attempts, to go to the root and burst fake currency notes racket, will fail. In short, when possibility of abusing the liberty granted cannot be ruled out, the applicant, who seems to be the scamster being a part to the organised crime, cannot be released on bail.

10. For the aforesaid reasons, I cannot put the seal of approval to the submissions advanced on behalf of the applicant while the submissions of learned A.P.P. being weighty have to be accepted. When possibility of repetition of such wrong cannot be denied, prudence dictates to deny the bail attaching preferential importance to the larger good than to the liberty of the applicant. The applicant, in view of the matter cannot be released on bail. In the result, this application is hereby dismissed.

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